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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,772	09/28/2004	Bryan Glenn Johnson	X-15407	2158

25885 7590 04/25/2007  
ELI LILLY & COMPANY  
PATENT DIVISION  
P.O. BOX 6288  
INDIANAPOLIS, IN 46206-6288

EXAMINER
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JARRELL, NOBLE E

ART UNIT	PAPER NUMBER
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1609

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
31 DAYS	04/25/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 31 DAYS from 04/25/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@lilly.com

<b>Office Action Summary</b>	Application No. 10/509,772	Applicant(s) JOHNSON ET AL.	
	Examiner Noble Jarrell	Art Unit 1609	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION*****Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1, 3, 5, 7, 9, 19, 21, drawn to compositions comprising clozapine and second agent selected from (1R, 4S, 5S, 6S)-4-(2'S)-(2'-amino)-propionyl]amino-(2-sulfonylbicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, (1R, 4R, 5S, 6R)-4-amino-(2-oxabicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, (1R, 2R, 4S, 5S, 6S)-2-amino-4-fluorobicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, and (+)-2-aminobicyclo[3.1.0]hexane-2,6-dicarboxylic acid.

Group II, claim(s) 2,4,6,8,10,20, 22, drawn to a method of using group I.

Group III, claim(s) 1,11,13,15,17, drawn to compositions comprising olanzapine and second agent selected from (1R, 4S, 5S, 6S)-4-(2'S)-(2'-amino)-propionyl]amino-(2-sulfonylbicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, (1R, 4R, 5S, 6R)-4-amino-(2-oxabicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, (1R, 2R, 4S, 5S, 6S)-2-amino-4-fluorobicyclo[3.1.0]hexane)-4,6-dicarboxylic acid, and (+)-2-aminobicyclo[3.1.0]hexane-2,6-dicarboxylic acid.

Group IV, claim(s) 2, 12, 14, 16, 18, 20, 22, drawn to a method of using group III.

2. The technical feature that links groups I and III is a composition comprising an antipsychotic drug and an mGlu2/3 receptor agonist. Monn et al. (US 5,750,566, published May 12, 1998) teach an aerosol solution, which consists of 2-aminobicyclo[3.1.0]hexane-2,6-dicarboxylic acid, ethanol, and a propellant. This formulation is formulation 3, on column 18, lines 53 to column 19, line 5. Goldberg (*Psychopathology*, 1984, 17 supplemental 1, 45-55) teaches that ethyl alcohol (which is a synonym for ethanol) is "the most common self-prescribed antianxiety drug." Even though the author goes on to state "Although alcohol is commonly used, it has no appropriate therapeutic role in anxiety treatment." (page 46, column 2, paragraph 2), alcohol is still used as an antianxiety drug. Alcohol is considered to be "atypical antipsychotic" because according to Stedman's, free-floating anxiety may be seen in latent schizophrenia. Therefore, when a subject is attempting to treat his/her anxiety, he/she may indirectly be treating schizophrenia. Based on this analysis, claim 1 of the instant application lacks unity.

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The inventions listed as Groups I and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The combination of an antipsychotic agent and a mGlu2/3 receptor agonist are known in the art. Therefore the technical feature is not special.

3. Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The species must be one of the agents listed as the second agent in groups I and III. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Monn et al. (US 5,750,566, published May 12, 1998) teach an aerosol solution, which consists of 2-aminobicyclo[3.1.0]hexane-2,6-dicarboxylic acid, ethanol, and a propellant. This formulation is formulation 3, on column 18, lines 53 to column 19, line 5. Goldberg (*Psychopathology*, 1984, 17 supplemental 1, 45-55) teaches that ethyl alcohol (which is a synonym for ethanol) is "the most common self-prescribed antianxiety drug." Even though the author goes on to state "Although alcohol is commonly used, it has no appropriate therapeutic role in anxiety treatment." (page 46, column 2, paragraph 2), alcohol is still used as an antianxiety drug. Alcohol is considered to be "atypical antipsychotic" because according to Stedman's, free-floating anxiety may be seen in latent schizophrenia. Therefore, when a subject is attempting to treat his/her anxiety, he/she may indirectly be treating schizophrenia. Based on this analysis, claim 1 of the instant application lacks unity..

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

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The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that

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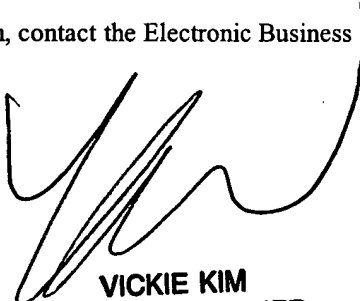
the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noble Jarrell whose telephone number is (571) 272-9077. The examiner can normally be reached on Monday-Friday from 7:30 to 6:00. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on (571) 272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NJ



**VICKIE KIM**  
**PRIMARY EXAMINER**